IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35414

IDAHO STATE TAX COMMISSION ,	)	**2009 Unpublished Opinion No. 605**
	)	
Plaintiff-Respondent,	)	**Filed: September 10, 2009**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
SPENCER WILLIAM and NANI JOY CHILD BEUS, husband and wife,	)	**THIS IS AN UNPUBLISHED OPINION AND SHALL NOT BE CITED AS AUTHORITY**
	)	
Defendants-Appellants,	)	
	)	
and	)	
	)	
THE ORDER OF TRANQUILITY,	)	
	)	
Defendant.	)	
	)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Owyhee County. Hon. Gregory M. Culet, District Judge.

Order denying motion to set aside default judgment, affirmed.

Spencer William Beus and Nani Joy Child Beus, Grandview, pro se appellants.

Hon. Lawrence G. Wasden, Attorney General; Erick M. Shaner, Deputy Attorney General, Boise, for respondent. Erick M. Shaner argued.

WALTERS, Judge Pro Tem

Spencer William Beus and Nani Joy Child Beus appeal from the district court's denial of their motion to set aside a default judgment. We affirm.

I.

BACKGROUND

According to the verified complaint filed below by the Idaho State Tax Commission, the Beuses received a Notice of Deficiency Determination from the Commission in January of 2001, stating that they had an income tax, penalty, and interest liability of $27,878 from tax year 1998. The Beuses requested and were granted an informal conference on the notice of deficiency, with

the Commission ultimately upholding the liability for an amount of $28,991, plus accruing interest. The Beuses then appealed to the Idaho Board of Tax Appeals but failed to tender the required 20% of the tax deficiency, resulting in the Board dismissing the Beuses' appeal. On December 12, 2002, the Commission issued a Notice and Demand to the Beuses for $29,238.15. The document also notified the Beuses that the Commission could lien, levy, and/or seize their assets if the taxes were not paid within ten days. Eleven days later, the Beuses transferred the real property on which they lived in Owyhee County via charitable gift to The Order of Tranquility, an entity whose "patriarch," as the Beuses refer to him and as he refers to himself, is a man named Rulon Frederick DeYoung. The Beuses continued to occupy the property even after transferring it to The Order of Tranquility.

In January of 2003, the Commission filed a Notice of State Tax Lien with the Idaho Secretary of State for $29,334 and filed a complaint with the district court on December 18, 2006, naming both the Beuses and The Order of Tranquility as parties and seeking to have the transfer to The Order of Tranquility declared null and void under the Fraudulent Conveyances Act. The complaint also asked the court to foreclose upon the real property in question and order it sold so that the proceeds could be applied toward the tax lien. The defendants' chain of documents filed in response began with one filed on February 9, 2007. Many more documents were to come, though for the most part they all centered on the defendants' assertion that the district court had no jurisdiction to hear the case before it. The district court held a hearing on the matter and determined that it did have jurisdiction. The defendants continued to dispute that conclusion, doing so until after the court entered default judgment against them for failure to answer the Commission's complaint. After the default judgment was entered, the Beuses filed a notice of appeal. The Beuses also filed a motion to set aside the default judgment, which was denied. The appeal was assigned to this Court.

II.

ANALYSIS

The Beuses assert three main issues. Essentially, they assert that the district court erred in granting a default judgment, erred in letting a different deputy attorney general represent the Commission during a hearing without having filed a notice of appearance, and erred in concluding that it had jurisdiction to foreclose on property involved in the default judgment. As an initial matter, we note that the Beuses' briefs, written pro se, are not entirely clear on whether

their appeal is from the court's default judgment or the court's denial of their motion to set aside the default judgment. While some language in the briefing clearly refers to the default judgment as opposed to the motion to set aside the default judgment and while the notice of appeal was filed before the motion to set aside had been filed, it is also the case that two of the issues raised on appeal were only raised in the motion to set aside, and the standard of review that the Beuses cite from case law pertains to motions to set aside. If the Beuses are attempting to appeal from the default judgment itself, we are unable to consider their appeal, because "[a]lthough a judgment by default is a final judgment, no appeal lies directly from such a ruling." *Dominguez ex rel. Hamp v. Evergreen Res., Inc.*, 142 Idaho 7, 14, 121 P.3d 938, 945 (2005). Instead, a party wishing to challenge a default judgment must move to have the default judgment set aside and, if the motion is denied, appeal from the order denying the motion. *Id. See also E. Idaho Econ. Dev. Council v. Lockwood Packaging Corp. Idaho*, 139 Idaho 492, 496, 80 P.3d 1093, 1097 (2003) (holding parties' failure to have the default set aside bars their appeal). Because it is not entirely clear whether the Beuses are appealing from the default judgment or the order denying the motion to set aside the default judgment, and because we are only able to consider this appeal if it is in fact an appeal from the order denying the motion to set aside, we analyze their appeal as being from the court's order denying the motion to set aside. Furthermore, because the notice of appeal from the default judgment was timely filed by the Beuses, their appeal encompasses all interlocutory orders preceding the judgment and all orders entered after the judgment, including the order denying the Beuses' motion to set aside the judgment. *See* Idaho Appellate Rule 17(e)(1).

Idaho Rule of Civil Procedure 55(c) authorizes courts to set aside default judgments in accordance with I.R.C.P. 60(b). Parties wishing to have a default judgment set aside must, in addition to meeting the requirements of Rule 60(b), also plead facts that, if established, would constitute a defense to the action. *Idaho State Police, ex rel. Russell v. Real Property Situated in County of Cassia*, 144 Idaho 60, 62, 156 P.3d 561, 563 (2007); *Cuevas v. Barraza*, 146 Idaho 511, 516, 198 P.3d 740, 745 (Ct. App. 2008). "The defense matters must be detailed. Once a default has been entered, the pleading of a defensive matter must go beyond the mere notice requirements that would be sufficient if pled before default. Factual details must be pled with particularity." *Id.* (citations omitted). However, "[t]o establish a meritorious defense, a party moving to set aside a default judgment is not required to present evidence in order to have the

default judgment set aside. The meritorious defense requirement is a pleading requirement, not a burden of proof." *Id.* at 518, 198 P.3d at 747 (citations omitted). A trial court's refusal to set aside a default judgment is reviewed for an abuse of discretion. *Suitts v. Nix*, 141 Idaho 706, 708, 117 P.3d 120, 122 (2005); *Danz v. Lockhart*, 132 Idaho 113, 114, 967 P.2d 1075, 1076 (Ct. App. 1998). In reviewing a trial court's disposition of a Rule 60(b)(1) motion, if

> (a) the trial court makes findings of fact which are not clearly erroneous; (b) the court applies to those facts the proper criteria under I.R.C.P. 60(b)(1) (tempered by the policy favoring relief in doubtful cases); and (c) the trial court's decision follows logically from the application of such criteria to the facts found, then the trial court will be deemed to have acted within its sound discretion, and its decision will not be overturned on appeal.

Tyler v. Keeney, 128 Idaho 524, 526, 915 P.2d 1382, 1384 (Ct. App. 1996) (citing *Shelton v. Diamond Int'l Corp.*, 108 Idaho 935, 703 P.2d 699 (1985)).

A. Adequacy of the Beuses' Response to the Commission's Complaint

Because we take the Beuses' appeal to be from the court's order denying their motion to set aside the default judgment, we view their issue statements in that light. Guided in part by the arguments set forth in their motion to set aside, we consider two of the Beuses' assertions of error on appeal to be related to the statutory basis for a Rule 60(b)(1) motion for relief and the third assertion of error to be related to the meritorious defense requirement for setting aside default judgments. First among the two proposed statutory bases is the assertion that the district court should have granted the Beuses' motion to set aside because, contrary to the court's conclusion, they had in fact answered the Commission's complaint. Default judgments should only be entered when the party against whom a judgment is sought has failed to plead or otherwise defend the action as provided by the Idaho Rules of Civil Procedure. I.R.C.P. 55(a)(1); *Parsons v. State*, 113 Idaho 421, 426, 745 P.2d 300, 305 (Ct. App. 1987). The decision to grant or deny a motion for default judgment is left to the discretion of the trial court. *Mastrangelo v. Sandstrom, Inc.*, 137 Idaho 844, 849-50, 55 P.3d 298, 303-04 (2002); *Johnson v. State*, 112 Idaho 1112, 1114, 739 P.2d 411, 413 (Ct. App. 1987). However, judgments by default are not favored, *Russell*, 144 Idaho at 62, 156 P.3d at 563; *Suitts*, 141 Idaho at 708, 117 P.3d at 122; *Wash. Fed. Sav. & Loan Ass'n v. Transamerica Premier Ins. Co.*, 124 Idaho 913, 916, 865 P.2d 1004, 1007 (Ct. App. 1993), and adjudication on the merits is preferred over adjudication upon default. *S. Idaho Prod. Credit Ass'n v. Gneiting*, 109 Idaho 493, 495, 708 P.2d 898, 900 (1985). *See also Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir.

1987); *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985); *Schwab v. Bullock's, Inc.*, 508 F.2d 353, 355 (9th Cir. 1974).

Here, the record shows that the Beuses filed at least four documents between the time the Commission filed its complaint and the time the Commission filed its application for default judgment. It shows that they also filed at least four additional documents after the Commission filed its motion for default judgment but before the default was granted. Additionally, the Beuses appeared in at least two hearings--one on their motion to quash the summons and another on the Commission's motion for default. While it might appear at first glance that the Beuses must have answered or at least "otherwise defended" the action through their multiple filings and two court appearances, upon closer inspection that is not the case. Of all the filings that the Beuses submitted to the district court prior to the entry of default, each one repeatedly limits itself to addressing the jurisdiction or general authority of the court to hear the case, without addressing the substance of the Commission's complaint. The Beuses essentially admit as much, by saying on appeal that their filings were "general denials" of the court's jurisdiction. The Beuses assert that their "general denials" of the court's jurisdiction are adequate to qualify as an answer to the Commission's complaint, citing I.R.C.P. 8(b) and related cases that allow parties to simply make "general denials" in their responsive pleadings as a way of adequately responding to claims asserted against them. However, I.R.C.P. 8(b) "general denials" are used to "controvert *all* averments of the preceding pleading," not just jurisdictional ones. I.R.C.P. 8(b). The Beuses' filings only refer to the court's authority to hear the case, however, and thus cannot be considered general denials addressing all the averments in the Commission's complaint. Language in their "Notice of Requirement that Plaintiff Has Burden of Proof . . ." indicates the Beuses may have purposefully refused to address the merits of the action against them in a mistaken belief that their refusal would somehow deprive the court of authority to hear the case. Similarly, the hearing transcripts do not contain any discussion of the merits by the Beuses. Instead, the Beuses either challenged the court's jurisdiction or objected to the court's decision to not allow DeYoung to speak at the hearing on the Commission's motion for default. Though the Beuses did file documents with the court and did appear at hearings, the court did not err in determining that, given the content of those filings and appearances, they did not constitute either an answer, as the Beuses assert, or anything else that might be construed as "otherwise defending" the suit. We note, too, that we would reach this same conclusion even under an

exceedingly lenient review of the filings, which the Beuses assert the district court, and presumably this Court as well, should have given them due to their pro se status. The fact remains, even under an exceedingly lenient reading of the filings, that the Beuses simply did not respond to the merits of the Commission's case against them.

Before addressing the next issue, we note that the Beuses also spent some time in their briefing addressing smaller sub-arguments related to their jurisdictional challenge. One such argument is that the court erred by not responding to two pre-default filings--one document said to be a notice to the Commission and the other said to be a general notice that the court should order the Commission to prove the court's jurisdiction. The court cannot be expected to respond to a notice to the Commission, however, and while it perhaps should have responded to the general notice, there is no harm in its failing to do so since the more general notice simply rehashed the jurisdictional issue that the court had already addressed on more than one occasion.

The other sub-argument is that the court erred in not giving the Beuses either formal notice of their inadequate response to the Commission's complaint, or an opportunity to remedy the inadequacy of their filings. This notice argument fails. First, the court notified the Beuses at the hearing on their "Timely Petition for Quashing . . ." that they had not yet filed an answer. It therefore would not make sense for them to believe that their repeated rehashing of the same jurisdictional challenges, that had been raised in the "Petition for Quashing" and rejected, would at some point become an answer. They therefore had been given notice of the fact that they had yet to answer the complaint. Also, the Commission's application for default and an accompanying affidavit asserted that the Beuses had not yet filed an answer, and the court stated toward the beginning of the hearing on the default application that the Beuses had not filed an answer. While the Beuses could have addressed the matter or sought clarification on it at the hearing, they instead chose not to address the case at all and to assert their belief that DeYoung, whom the court had barred from speaking to the court, should have been able to do so. The Beuses were thus given sufficient notice that their filings were inadequate.

B. The Commission's Legal Representation

At the hearing on the Commission's motion for default, the deputy attorney general appearing on the Commission's behalf was different than the deputy who had been acting on the Commission's behalf up to that point. While they did not object to it at the time, the Beuses argued in their motion to set aside, and continue to argue on appeal, that the second deputy

should have filed a notice of substitution of counsel prior to appearing on the Commission's behalf. The Beuses asserted in their motion to set aside that the failure to file a notice of substitution constituted a mistake as that term is used in Rule 60(b)(1) and that the default judgment should have therefore been set aside on that ground. Though we question whether "mistake," as that term is used in Rule 60(b)(1), applies to alleged mistakes of the non-moving party, we will nevertheless address the merits of the Beuses' contention. We ultimately conclude that the Beuses' argument fails, whether analyzed under "mistake" or any of the other enumerated Rule 60(b)(1) bases.

By statute, it is the attorney general who represents the Tax Commission in court, I.C. §§ 67-1401(1), 67-1406, and though the attorney general may assign deputy attorneys general and special deputy attorneys general to assist in such representation, I.C. § 67-1401(13), it is still the attorney general who technically serves as the Commission's representative. Here, though a different deputy was present on the Commission's behalf during one of the hearings than had previously been present, no change in representation had actually taken place since it was the attorney general who represented the Commission at all times. Because the attorney general is the one who represented the Commission at all times, albeit through different deputies, the rules do not require that a notice of change of counsel be filed. The court therefore did not err in refusing to grant the motion to set aside on the basis of the Commission's legal representative having not filed a notice of substitution of counsel.

C. The Effect of a Land Patent

Finally, the Beuses assert several errors with respect to the district court's order of foreclosure on their real property, all of which appear to be rooted in, or at least related to, their assertion that the district court did not have the power to foreclose on their property because the property had been granted to the Beuses' predecessor in interest via a federal land patent or because the Beuses themselves filed a "Declaration of Land Patent" on the property after they acquired it in 1983. Because the land patent argument was raised in the motion to set aside the default judgment as a meritorious defense in satisfaction of the requirement that such motions contain meritorious defenses, we consider it and its related sub-arguments to be raised on appeal for that purpose as well. Our conclusion regarding the merits of the land patent-related arguments would be the same, however, if they were evaluated as proposed grounds for satisfying one of the Rule 60(b)(1) bases.

We first take up the Beuses' primary land patent assertion--that the district court was without authority to foreclose on their real property because the property had originally been placed into private ownership via a federal land patent. Black's Law Dictionary defines a land patent as "[a]n instrument by which the government conveys a grant of public land to a private person." BLACK'S LAW DICTIONARY 1156 (8th ed. 2004). *See also Van Zelst v. C.I.R.*, 100 F.3d 1259, 1261 (7th Cir. 1996) ("A 'land patent' is equivalent to fee simple ownership."); *Beres v. United States*, 64 Fed. Cl. 403, 417 (Fed. Cl. 2005) ("[W]hen a patent issues . . . all title and control of the land passes from the United States." [quoting *Swendig v. Wash. Water Power Co.*, 265 U.S. 322, 331 (1924)]). Contrary to the Beuses' assertion, the fact that one receives title from the federal government via a federal land patent does not render the property immune from foreclosure by a state court under state law. While the cases that the Beuses cite to the contrary address the *validity* of title granted through federal land patents, *see e.g. Langdon v. Sherwood*, 124 U.S. 74, 82-85 (1888); *Beard v. Federy*, 70 U.S. 478, 479 (1865), they do not state that possessors of such title cannot have it seized from them in a state court through foreclosure or other appropriate legal channels. The original source of title does not change the fact that property conveyed through that title is subject to the same laws and regulations as any other property, *see Virgin v. County of San Luis Obispo*, 201 F.3d 1141, 1144 (9th Cir. 2000) ("[P]roperty received through federal land patents is subject to state and local regulations."), or that state courts are a proper forum for the enforcement of said laws and regulations. *Oneida Indian Nation of N.Y. State v. County of Oneida, New York*, 414 U.S. 661, 676 (1974) ("Once patent issues, the incidents of ownership are, for the most part, matters of local property law to be vindicated in local courts . . . ."); *see also Landi v. Phelps*, 740 F.2d 710, 713-14 (9th Cir. 1984).

To the extent the Beuses argue the foreclosure was improper because the United States should have been joined as an indispensible party, that assertion is also incorrect. Idaho Rule of Civil Procedure 19(a)(1) provides a party shall be joined if:

> (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

"[J]oinder of all parties with an interest in the subject matter of the suit is not required; rather, only those who have an interest in the object of the suit should be joined." *Tower Asset Sub Inc. v. Lawrence*, 143 Idaho 710, 714, 152 P.3d 581, 585 (2007). The Beuses did not move to have the United States joined as a party and they did not raise the issue in their motion to set aside. Furthermore, they fail to argue how the United States satisfied the Rule 19(a)(1) requirements and instead cite to cases from federal jurisdictions that discuss situations highly distinguishable from the situation at hand. Regardless, having held or conveyed title to property does not imbue one with a continued interest in that property. Here, the United States was no more an indispensible party than was the person who had conveyed the property to the Beuses or than the Beuses would be if, years later, the property came under different ownership and was the subject of other, unrelated, litigation.

Next, the Beuses claim that the property was insulated from foreclosure to satisfy a tax lien because they had filed a "Declaration of Land Patent" on the property in 1999 and therefore the district court did not have jurisdiction to entertain the foreclosure proceedings. Their position is fallacious. *See, e.g., State of Wisconsin v. Glick*, 782 F.2d 670 (7th Cir. 1986); *Hilgeford v. Peoples Bank, Portland, Indiana*, 607 F. Supp. 536, 536-39 (N.D. Ind. 1985); *Britt v. Fed. Land Bank Ass'n of St. Louis*, 505 N.E.2d 387 (Ill. App. Ct. 1987); *Fed. Land Bank of Spokane v. Redwine*, 755 P.2d 822 (Wash. Ct. App. 1988).

The Beuses also briefly assert two additional arguments in their discussion of the land patents and the court's ability to foreclose on their real property. These arguments appear to be that the Beuses' position is supported by the Idaho Code definition of a "public land survey corner" and that they have color of title to the real property because the property was given to them through a warranty deed from their predecessor in interest. It is unclear how either of these assertions are supposed to advance the Beuses' arguments on appeal, and they do not alter our conclusion here.

D. Attorney Fees Issues

The Commission discloses that it incorrectly requested and was granted an award for attorney fees by the district court which was reflected in the judgment entered below but was not challenged or asked to be set aside by the Beuses. Although the Commission now asks that this Court direct the district court to reduce the judgment by subtracting the erroneous amount, this

Court concludes that the request should be presented to the district court in the first instance, not to this Court.

The Commission also asks for a discretionary award of attorney fees for this appeal under various rules and statutes. We decline to grant that request.

III.

CONCLUSION

The order denying the motion to set aside the default judgment is affirmed. No attorney fees on appeal are awarded. Costs on appeal are awarded to the respondent.

Judge PERRY and Judge GUTIERREZ **CONCUR.**